

In re Patent Application of:
ZAKHAROFF
Serial No. **10/786,450**
Filing Date: **FEBRUARY 25, 2004**

REMARKS

The Examiner is thanked for the thorough examination of the present application. The Examiner's Drawing objections are addressed below. The patentability of the claims is discussed below.

I. The Claimed Invention

The invention, as recited in independent Claim 1, for example, is directed to a communications system which includes at least one destination server for hosting a plurality of electronic mail (email) message boxes, and a plurality of communications devices for generating email messages each associated with a respective message box. The system further includes a delivery server including a plurality of queues and a controller. More particularly, the controller is for storing the email messages generated by the communications devices in a first queue, and attempting to send the stored email messages to the at least one destination server at a first sending rate. The controller also moves email messages stored in the first queue to a second queue based upon receipt of a delivery failure message. The controller then attempts to send email messages stored in the second queue to the at least one destination server at a second sending rate less than the first sending rate. The controller also advantageously moves email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue.

Independent Claim 10 is directed to a corresponding delivery server of independent Claim 1. Independent Claim 17 is directed to a corresponding method of independent Claim 1, and

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independent Claim 24 is directed to a related computer-readable medium.

II. The Drawings Show Every Feature Specified in the Claims

The Examiner objected to the drawings as failing to disclose each feature specified in the claims. More particularly, the Examiner now contends that Figures 3 and 4 contradict the claim limitation of moving email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue.

Applicant submits that the drawing show every feature specified in the claims. For the Examiner's convenience, Applicant has copied a portion of independent Claim 1 below and mapped the claim portion to Figures 3 and 4. Corresponding portions of Applicant's Specification can be found in paragraphs 0039-0043, for example:

...a delivery server comprising a plurality of queues and a controller for

storing the email messages generated by said communications devices in a first queue (62, 62'), and attempting to send the stored email messages to said at least one destination server at a first sending rate (62, 62'),

moving email messages stored in said first queue to a second queue (64) based upon receipt of a delivery failure message (63, 63'),

attempting to send email messages stored in said second queue (65) to said at least one destination

server at a second sending rate less than the first sending rate, and

moving email messages having a common characteristic with a successfully delivered email message (66, 66') from said second queue to said first queue (67, 77).

Indeed, the drawings show every feature specified in the claims.

The Examiner also contended that Figure 4 does not disclose movement from the second queue to the first queue based on a common characteristic. Applicant disagrees and points the Examiner to Block **66'** of Figure 4 and the corresponding portion of the specification, paragraph 0042, which describes, "If no successful delivery of another email message sharing a common characteristic occurs (Block **66'**), the controller **30'** attempts to send the messages from the queue **32a'** during the storage interval thereof, at Blocks **72'-75'.**" Accordingly, Figure 4 discloses movement from the second queue to the first queue based on a common characteristic.

Additionally, the Examiner further contends that, according to Figure 3, element **66**, if a message is sent from a slower queue is successful, it is moved from the first queue to the second queue - the Examiner queries as to how it is possible since the message is gone, sent, and no longer available to be moved. The Examiner is mischaracterizing Figure 3 in that the corresponding description to Figure 3, element **66**, describes, "Further, email messages are moved from the second queue **32** to the first queue **31** having a common characteristic with a successfully delivered (Block **66**) email message, at Block **67...**"

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Indeed, as recited in the independent claims, the successfully delivered email message is another email message by way of the recitation of "a successfully delivery email message." (Emphasis Added). Accordingly, the Examiner's objection should thus be withdrawn.

III. The Claims Are Patentable

The Examiner rejected independent Claims 1, 10, 17 and 24 over a three-way combination of Shaw et al., D'Souza et al., and Sherwood. Shaw et al. is directed to an enterprise email management system for handling large volumes of email, responding through enterprise email system users or automated processes.

The Examiner correctly recognized that Shaw et al. fails to disclose storing the email messages generated by the communications device in a first queue, and attempting to send the stored email messages to the at least one destination server at a first attempt rate. The Examiner further correctly recognized that Shaw et al. fails to disclose attempting to send email messages stored in the second queue to the at least one destination server at a second rate less than the first sending rate. The Examiner still further correctly recognized that Shaw et al. fails to disclose that moving email messages stored in the first queue to a second queue is based upon receipt of a delivery failure message, and moving email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue. The Examiner then turned to D'Souza et al. for some of these critical deficiencies.

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D'Souza et al. is directed to a system and method of mitigating attacks, such as denial of service attacks in a communications network. More particularly, D'Souza et al. discloses monitoring source addresses of packets in a network and comparing the source addresses to known legitimate addresses. If a source address is known as being legitimate, the packets are placed in a high priority queue for transmission at the highest rate. Packets with unknown addresses are placed in a lower priority queue and the packet serviced at a lower rate.

The Examiner further correctly recognized that even a selective combination of Shaw et al. and D'Souza et al. fails to disclose that moving email messages stored in the first queue to a second queue is based upon receipt of a delivery failure message, and moving email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue. The Examiner turned to Sherwood in an attempt to supply these critical deficiencies.

Sherwood is directed to a system for selective application of email delivery options. More particularly, Sherwood discloses a system for selectively applying delivery options to addresses in an email, for example, selectively applying a delivery confirmation and/or return receipt for an email address.

The Examiner contended that Figures 2 and 3, and Col. 4, lines 45-47, of Sherwood disclose that moving email messages stored in the first queue to a second queue is based upon receipt of a delivery failure message, and moving email messages having a common characteristic with a successfully delivered

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email message from the second queue to the first queue. Applicant submits that the Examiner has mischaracterized Sherwood in that it fails to disclose that moving email messages stored in the first queue to a second queue is based upon receipt of a delivery failure message, and moving email messages having a common characteristic with a successfully delivered email message from the second queue to the first queue. Instead, Sherwood discloses selectively applying delivery options to each address from an address list, for example, return receipt or delivery confirmation. Sherwood discloses:

...delivery options can be selectively applied to each of these addressees. Specifically, button 320 can be selected to place a highlighted addressee from address list 310 into the delivery confirmation list 330. Similarly, button 325 can be clicked using a mouse, for example, in order to place a highlighted addressee from address list 310 into return receipt list 335. In this way, a user can easily see which delivery option is being applied to each addressee. (See Sherwood, Col. 4, lines 44-52).

The above-noted selection is performed before any email is sent: "The user then selects the delivery options for each of the addressees in the list. The process then continues at step 423 with the conventional email composition and sending process." (See Sherwood, Col. 5, lines 14-16 and 28-31, for example). Nowhere does Sherwood disclose that moving email messages stored in the first queue to a second queue is based upon receipt of a delivery failure message, and moving email messages having a common characteristic with a successfully

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delivered email message from the second queue to the first queue. Accordingly, independent Claims 1, 10, 17, and 24 are patentable for at least this reason.

Applicant further submits that the Examiner's combination of references is improper. More particularly, a person having ordinary skill in the art would not turn to Sherwood to supply the critical deficiencies of Shaw et al, and D'Souza et al., and even turn to D'Souza et al. to combine with Shaw et al. Sherwood is directed to a system for applying delivery options to addressees in an email. More particularly, Sherwood discloses selecting an option of delivery confirmation and return receipt for an addressee. Sherwood is not directed to sending the email, as it is sent using "the conventional email composition and sending process."

In stark contrast, D'Souza et al. is directed to a queuing method for mitigation of packet spoofing. More particularly, D'Souza et al. attempts to mitigate attacks such as Denial of Service attacks by examining all incoming packets. In stark contrast from both D'Souza et al. and Sherwood, Shaw et al. is directed to an enterprise email management system for handling large volumes of email. Indeed, the Examiner is using impermissible hindsight reconstruction based on motivation provided by Applicant's own specification in an attempt to produce the claimed invention by selectively assembling disjoint pieces of the prior art. Accordingly, the Examiner's combination of references is improper.

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Accordingly, it is submitted that independent Claims 1, 10, 17, and 24 are patentable over the prior art. Their respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

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IV. CONCLUSION

In view of the arguments provided herein, it is submitted that all the claims are patentable. Accordingly, a Notice of Allowance is requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,



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